

### **REMARKS**

Applicant submits the following amendments and remarks after the final office action of November 27, 2009. Applicant does not believe that the amendments should involve new consideration or additional searches by the PTO. Entry of this Amendment After Final is hereby merited.

Claims 1, 20 and 21 have been amended. Claims 1-15 and 17-35 are pending in the application. Applicant reserves the right to pursue the original claims in this and in any other application.

Claims 1-15 and 17-20 stand rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. Applicant respectfully traverses the rejection. First, claim 1 has been amended to remove the term “high traffic” that the Office Action claimed lacked written description support. Second, claims 1 and 20 have been amended to change “shipper rates” to “shipper fees,” which have written description support at least in FIGS. 2-5, 7, 9, 10, 12 and 13. Claims 2-15 and 17-19 depend from claim 1. Accordingly, the rejection should be withdrawn.

Claims 21-35 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicant respectfully traverses the rejection. Claim 21 has been amended as recommended on page 2 of the Office Action to overcome this rejection. Accordingly, the rejection should be withdrawn.

Claims 1, 3-15, 17 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,374,178 (Nakagawa) in view of Applicant’s alleged prior art admission (AAPA) and Lazar N. Spasovic, Planning Intermodal Drayage Network Operations, University of Pennsylvania, 1990 (“Spasovic”).

Claim 1 recites a “system for administering a collaborative drayage community *in real-time* [comprising] storing means for storing *in real-time* a plurality of drayage resource data fields,

and drayage resource data . . . ; receiving means for receiving query data *in real-time* from at least one member . . . ; retrieval means for retrieving *in real-time* a drayage resource result list . . . ; and delivery means for delivering *in real-time* said drayage resource result list.” (Emphasis added). The Nakagawa/AAPA/Spasovic combination does not disclose, teach or suggest these limitations. Instead, Nakagawa merely teaches *statically* determining a “transportation arrangement plan” and “transmit[ing] the transportation arrangement plan . . . to each transportation base” for implementation. Nakagawa, col. 14, lns. 3-5. In particular, because the system of claim 1 stores, receives, retrieves and delivers resource data in real-time, the system of claim 1 can adjust to a change in circumstances in real-time. *See, e.g.*, present application, paras. [0040]-[0042]. In contrast, Nakagawa does not teach any means of adjusting to a change in circumstances, and therefore does not provide for real-time storage, receiving, retrieval and delivery of resource data as recited in claim 1. Neither AAPA, cited as allegedly teaching drayage shipping, nor Spasovic, cited as teaching “maximizing reciprocal loads, minimizing bobtailing and reducing congestion at terminals,” cures these deficiencies of Nakagawa. For at least this reason, the Nakagawa/AAPA/Spasovic combination does not render obvious claim 1.

Claim 1 also recites “receiving means for receiving query data in real-time from at least one member . . . ; retrieval means for retrieving in real-time a drayage resource result list comprising all drayage resources having a match between said query data and said respective drayage resource data; and delivery means for delivering in real-time said drayage resource result list and said drayage resource data associated with each of said drayage resources in said drayage resource result list to the at least one member to allow the at least one member to maximize reciprocal loads, minimize bobtailing, and reduce congestion at terminals.” The Nakagawa/AAPA/Spasovic combination does not disclose, teach or suggest these limitations either. In particular, as stated in Applicant’s February 23, 2009 response, Nakagawa is directed towards a centralized transportation arrangement system for shipping, which provides a means to create an optimal route between various distribution centers and transportation bases. Nakagawa emphasizes a single assignable optimal route between points. *See* Nakagawa at Abstract; col. 3, lns. 60-64; col. 11, lns. 9-12. As a result, Nakagawa does not disclose delivering to at least one member a list of all

drayage resources that match criteria submitted by the member, as recited in claim 1. Neither AAPA, cited as allegedly teaching drayage shipping, nor Spasovic, cited as teaching “maximizing reciprocal loads, minimizing bobtailing and reducing congestion at terminals,” cures the above-described deficiencies of Nakagawa. Moreover, the Office Action implicitly suggests that this limitation is patentable over the Nakagawa/AAPA/Spasovic combination. Office Action, p. 3, para. 8. For this reason as well, the Nakagawa/AAPA/Spasovic combination does not render obvious claim 1. Claims 3-15, 17 and 19 depend from claim 1. Accordingly, the rejection should be withdrawn and claims 1, 3-15, 17 and 19 allowed.

In addition, the system of claim 1 delivers the marketplace to the members and is therefore more efficient than Nakagawa that simply delivers only a single result based on a computer algorithm. By providing to a member all drayage resources that match a specified criteria, the system of claim 1 actually delivers the marketplace. In contrast, the system of Nakagawa delivers only a single result based on a computer algorithm and is therefore unable to respond to market and resource changes between executions of the algorithm. Claim 1, therefore, is more flexible, and thus more efficient, in that it places more control in the hands of the marketplace. It is clear from the prior art that the marketplace is a more efficient means of handling drayage than the computer generated result of Nakagawa. See Edward K. Morlok and Lazar N. Spasovic, Approaches For Improving Drayage In Rail-Truck Intermodal Service, pp. 15-17, August 18, 1994 (submitted in an IDS concurrently herewith). Only an open marketplace, where participants have full visibility to see all possibilities as they change in real time, can be optimal. Nakagawa, therefore, is very different from the system of claim 1.

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakagawa in view of Applicant’s alleged prior art admission (AAPA), Spasovic and U.S. Patent No. 6,577,921 (“Carson”). Applicant respectfully traverses the rejection. Claim 2 depends from claim 1 and is therefore patentable over the Nakagawa/AAPA/Spasovic combination for at least the reasons described above with respect to claim 1. Carson, cited as teaching that the shipping resource is a container, does not cure the above-described deficiencies of the Nakagawa/AAPA/Spasovic combination. Accordingly, the rejection should be withdrawn and claim 2 allowed.

Claim 18 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakagawa in view of Applicant's alleged prior art admission (AAPA), Spasovic and "Conflict, Power and Evolution in the Intermodal Transportation Industry's Channel of Distribution," Transportation Journal, Spring 2000, pp. 5-17 ("Taylor"). Applicant respectfully traverses the rejection. Claim 18 depends from claim 1 and is therefore patentable over the Nakagawa/AAPA/Spasovic combination for at least the reasons described above with respect to claim 1. Taylor, cited as disclosing "proposing an interchange agreement," does not cure the deficiencies of the Nakagawa/AAPA/Spasovic combination. Accordingly, the rejection should be withdrawn and claim 18 allowed.

Claims 20-23, 25-30 and 32-35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakagawa in view of Applicant's alleged prior art admission (AAPA). Claims 20 and 21 contain similar limitations as those discussed above with respect to claim 1, and are therefore patentable over the Nakagawa/AAPA combination for at least the reasons discussed above with respect to claim 1. Claims 22, 23, 25-30 and 32-35 depend from claim 21. Accordingly, the rejection should be withdrawn and claims 20-23, 25-30 and 32-35 allowed.

Claim 24 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakagawa in view of Applicant's alleged prior art admission (AAPA) and Taylor. Applicant respectfully traverses the rejection. Claim 18 depends from claim 21 and is therefore patentable over the Nakagawa/AAPA combination for at least the reasons described above with respect to claim 21. Taylor, cited as disclosing "executing an interchange agreement," does not cure the deficiencies of the Nakagawa/AAPA combination. Accordingly, the rejection should be withdrawn and claim 24 allowed.

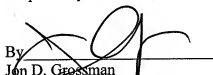
Claim 31 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakagawa in view of Applicant's alleged prior art admission (AAPA) and Carson. Applicant respectfully traverses the rejection. Claim 31 depends from claim 21 and is therefore patentable over the Nakagawa/AAPA combination for at least the reasons described above with respect to claim 21. Carson, cited as teaching that the shipping resource is a container, does not cure the deficiencies of

the Nakagawa/AAPA combination. Accordingly, the rejection should be withdrawn and claim 31 allowed.

In view of the above, Applicant believes the pending application is in condition for allowance.

Dated: March 26, 2010

Respectfully submitted,

  
By  
Jen D. Grossman  
Registration No.: 32,699  
DICKSTEIN SHAPIRO LLP  
1825 Eye Street, NW  
Washington, DC 20006-5403  
(202) 420-2200  
Attorney for Applicant